

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3038 of 1998

to

FIRST APPEAL No 3048 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

EXECUTIVE ENGINEER

Versus

SPL.LAND ACQUISITION OFFICER

Appearance:

MR GHANSHYAM AMIN for Petitioner
MR GM AMIN for Respondent No. 1
Mr. H.L. Jani, AGP, for the State in F.A. Nos.
3038/98 to 3042/98
Mr. M.R. Raval, AGP, for the State in F.A.
Nos. 3043/98 to 3048/98

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 02/02/99

COMMON ORAL JUDGMENT : (Per: Panchal. J.)

1. All these above-numbered First Appeals are ordered to be admitted. Mr. Gopinath M.Amin, learned counsel, waives service of notice in each appeal on behalf of the original claimants. Mr.H.L. Jani and Mr. M.R. Raval, learned Assistant Government Pleaders, waive service of notice on behalf of the Special Land Acquisition Officer, Nadiad, District Kheda, in all these appeals. At the joint request of the learned counsel appearing for the parties, the appeals are taken up for final hearing today.

2. All these appeals which are filed under Section 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated November 18, 1997, rendered by the learned Extra Assistant Judge, Kheda at Nadiad, in Land Acquisition Reference Nos. 954 of 1993 to 964 of 1993 and, therefore, we propose to dispose of these appeals by this common judgment. We may state that the lands of the claimants were acquired pursuant to common notification which was issued under Section 4(1) of the Land Acquisition Act, 1894, and all the land reference cases were tried together treating Land Reference Case No.955/93 as the main case.

3. The Executive Engineer, Narmada Project, had proposed to the State Government to acquire the agricultural lands of village Davapura, Taluka Nadiad, District Kheda, for the purpose of Davapura Minor Canal of Shedhi Branch. On scrutiny of proposal, the State Government was satisfied that the agricultural lands of village Davapura were likely to be needed for the said public purpose. Accordingly, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued, which was published in the official gazette on August 7, 1990. The land owners, who were served with notices under Section 4 of the Act, had filed objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer, Narmada Project, had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands, which were specified in the notification issued under Section 4(1) of the Act, were needed for the public purpose of Davapura Minor Canal of Shedhi Branch. Therefore, declaration under Section 6 of the Act was made which was also published in the official

gazette on December 5, 1991. Interested persons were, thereafter, served with notices under Section 9 of the Act for determination of compensation. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.3000/- per Are. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.375/- per Are, by award dated April 30, 1992. The claimants were dissatisfied with the offer and by making application in writing under Section 18 of the Act they required the Special Land Acquisition Officer to refer the matters to the Court for the purpose of determination of compensation. Accordingly, references were made to the District Court, Kheda, at Nadiad, which were numbered as Land Acquisition Case Nos. 934 of 1993 to 964 of 1993.

3. In the reference applications, it was pleaded by the claimants that having regard to the fertility of the lands acquired and potentiality, they were entitled to higher compensation and they should be awarded compensation at the rate of Rs.3000/- per Are. The reference applications were contested by the present appellant as well as respondent No.1 by filing reply at Exh.5. In the reply, it was contended that in view of the income derived by the claimants from the lands acquired as well as market value of the lands situated nearby, the Special Land Acquisition Officer was justified in offering compensation at the rate of Rs.375/- per Are and, therefore, the reference applications should be dismissed. In view of the rival assertions made by the parties, necessary issues for determination were framed by the Reference Court. On behalf of the claimants, witness Babubhai Maherubhai Gohel was examined at Exh.12 to substantiate the claim advanced in the reference applications. He deposed that his land was acquired in the present case and village Davapura is adjoining to village Arandiapura. It was also stated by the witness that both the villages have common panchayats and development as well as fertility of the lands situated in both the villages is same. Though this witness was cross examined on behalf of the appellant as well as respondent No.1, nothing could be brought on record to demolish what he had asserted in his examination-in-chief. On behalf of the claimants, previous awards of the Reference Court rendered in respect of agricultural lands of village Arandiapura was produced at Exh.13. It indicated that, in Land Acquisition Case No.299 of 1989, the Reference Court had determined market value of the agricultural lands acquired at Rs.2500/- per Are as on 1986, which was the

year of publication of notification under Section 4(1) of the Act. Another award relating to agricultural lands of village Bilodara was produced at Exh.14. Therein also, notification under Section 4(1) of the Act was published in the year 1986 and the Court had determined market value of the lands acquired at the rate of Rs.2500/- per Are. Exh.15 produced by the claimants further showed that the award of the Reference Court in respect of lands of village Bilodara was confirmed by the High Court in First Appeal No.2397 of 1983. It is relevant to note that no oral evidence was led either by the present appellant or by respondent No.1. However, respondent No.1 produced earlier award of the Court in respect of the lands of village Kesara at Exh.21, whereby, the Court had assessed market value of the lands of village Kesara at Rs.9/- per sq.mtr as on February 13, 1984, which was the date of publication of notification issued under Section 4(1) of the Act. On consideration of evidence led by the parties, the Reference Court held that the previous award relating to the lands of village Kesara was neither comparable nor relevant for the purpose of ascertaining the market value of the lands acquired in the present case. The Reference court deduced that earlier awards passed in respect of lands of village Arandiapura and village Bilodra were not only comparable but also relevant for the purpose of ascertaining the market value of the lands acquired in the present case. Placing reliance upon the earlier awards in respect of lands of village Arandiapura and village Bilodra, the Reference Court held that the claimants were entitled to compensation at the rate of Rs.1640 per Are by common award dated November 18, 1997, which has given rise to the present appeals.

4. Mr. Ghanshyam H. Amin, learned counsel for the appellant, pleaded that having regard to fertility of lands acquired as well as development which has taken place in village Davapura, the Reference Court should not have awarded compensation to the claimants at the rate of Rs.1640/- per Are. It was claimed that earlier awards produced and relied upon by the claimants were neither comparable nor relevant for the purpose of determining market value of the lands acquired in the present case and, therefore, the common award should be set aside. What was stressed was that merely because three villages, i.e., Arandiapura, Davapura and Jorapura, have common panchayat, it cannot be said that previous award of the Reference Court rendered in respect of the lands of surrounding villages would be relevant for the purpose of determining market value of the lands acquired from

another village and, therefore, the common award should be set aside. The learned counsel for the appellant emphasized that the Special Land Acquisition Officer was justified in offering compensation to the claimants at the rate of Rs.375/- per Are and, therefore, the appeals should be allowed.

5. Mr. Gopinath M.Amin, learned counsel appearing for the claimants, submitted that, in view of the well settled legal position that previous awards of the court rendered in respect of similar lands of similar village or adjacent lands and which have become final can be relied upon, it cannot be said that any error was committed by the Reference Court in placing reliance on the previous awards and, therefore, the appeals should be dismissed. It was highlighted that, in spite of opportunity having been given, neither oral nor documentary evidence was adduced by the present appellant or by respondent No.1 and, therefore, the award passed by the Reference Court should be upheld. What was claimed was that a just and reasonable award is passed by the Reference Court and, therefore, the appeals should be dismissed.

6. Mr.H.L. Jani and Mr. M.R. Rawal, learned Assistant Government Pleaders, appearing for the Special Land Acquisition Officer, Kheda, at Nadiad, have adopted the arguments advanced by the learned counsel for the appellant and pleaded that the amount of compensation determined by the Reference Court, being on the higher side, the appeals should be allowed.

7. We have been taken through the relevant evidence by the learned counsel for the parties. So far as the earlier award rendered by the Reference Court in respect of lands of village Kesara is concerned, we notice that no oral evidence was adduced on behalf of the appellant to establish before the Reference Court that fertility of the lands acquired in this case was the same as that of the lands of village Kesara. Even it was not brought to the notice of the Court that village Kesara was adjoining village Davapura. Exh.21 which is earlier award in respect of lands of village Kesara would indicate that village Kesara is in Mehmabad Taluka, whereas village Davapura is in Nadiad Taluka. In view of paucity of evidence, it cannot be said that any error was committed by the Reference Court in not placing reliance on Exh.21 for the purpose of ascertaining the market value of the lands acquired of village Davapura. So far as earlier award of the Reference Court with respect to the lands of village Arandiapura is concerned, claimant, Babubhai

Maherubhai Patel, deposed before the Court that there was common panchayat for village Arandiapura and village Davapura. This statement made on oath by one of the claimants was not controverted by the present appellant. The witness also deposed that fertility of lands of both the villages was same. This assertion was also not controverted by the present appellant. The witness further deposed that village Bilodra was adjoining his village. The previous award rendered by the Reference Court in respect of lands of village Arandiapura would indicate that the lands of village Arandiapura, Taluka Nadiad, were acquired for the purpose of construction of Ahmedabad-Vadodara Express Way and notification under Section 4(1) of the Act was published in the official gazette on July 21, 1986. There, the Reference court had determined the market value of the lands of village Arandiapura at the rate of Rs.2500/- per Are. Exh.13, which is previous award of the Reference Court in respect of lands of village Bilodra, shows that the lands of village Bilodra were acquired for the purpose of construction of Ahmedabad-Vadodara Express Way and notification under Section 4(1) of the Act was published in the government gazette on October 15,1986. There, the Reference Court, having regard to the evidence on record, had determined the market value of the lands at the rate of Rs.2500/- per Are. Exh.15 which is judgment of the High Court rendered in First Appeal (St.) No.2397 of 1993, shows that the award of the Reference court in respect of lands of village Bilodra was confirmed by the High Court. It is well settled that earlier award of the Reference Court or the High Court in respect of similar or adjacent lands and which has become final between the parties can be taken into consideration for the purpose of ascertaining the market value of the lands acquired subsequently from another village. The awards rendered by the Reference Court in respect of the lands of village Arandiapura and village Bilodra have become final and it is not brought to the notice of the Court that those awards have been modified in any manner by the higher forum. As noted earlier, the claimants have led positive evidence to establish that the lands of village Davapura had same advantages as were available to the lands of villages Arandiapura and Bilodra. No evidence was led by the appellant to indicate that lands of village Davapura were inferior in any manner in quality to the lands of village Arandiapura or village Bilodra or that the lands of village Davapura had certain disadvantages because of certain relevant factors. Under the circumstance, it cannot be said that any error was committed by the Reference Court in placing reliance on earlier awards made in respect of the lands of village Arandiapura and

village Bilodra. Further, it was noticed by the Reference Court that village Davapura was situated in interior and was less developed in comparison to village Arandiapura. Under the circumstance, the Reference Court had rightly deducted 50% from the market value of the lands of village Arandiapura in order to ascertain the correct market value of the lands of Davapura. In case of village Arandiapura, notification under Section 4(1) of the Act was published on July 21, 1986, whereas, in the present case, notification under Section 4(1) of the Act was published on August 7, 1990 and, therefore, the Reference Court was justified in considering rise in price of lands while ascertaining the correct market value of the lands acquired. It is reasonable to presume that price of lands would increase with passage of time, and, having regard to the facts of the case, it cannot be said that the Reference court has committed any error in considering the rise in price of lands at the rate of 8% per annum. On over all view of the matter, we are satisfied that a just and reasonable award has been passed determining the market value of the lands acquired, and no ground is made out by the appellant to interfere with the same. Under the circumstance, the appeals cannot be allowed and are liable to be dismissed.

8. For the foregoing reasons, all the appeals fail and are dismissed, with no order as to costs.

(swamy)